P-10
E

Prohibition II/51(R)

1951 **File No.** Pt I

Legal Deptt.

B. **BRANCH**

Subject:— Rules under the

Bombay Prohibition Act, 1949.

(for subsequent pfs pl. see pt. II)

File No. Prohibition II/51(R)

Pt I

Gen. 191 e.

K

Legal Department.

It is true that the word "person" as defined in the Bombay General Clauses Act, 1904 includes any company or association or body of individuals whether incorporated or not. But this definition is to be adopted unless there is anything repugnant in the subject or context. From the scheme of rule 68 of the Bombay Foreign Liquor Rules, 1950 it is clear that it applies only to individuals. The proviso to sub-rule (2) provides that the applicant shall not be a minor. It is clear that this proviso would not apply to an association or body of individuals. The Form F.L/A-8 prescribed under rule 68 also makes it clear that the form is to be filled in by an individual as the particulars given therein all apply to an individua If Government desires to have power to issue a permit to the person in management of an association or a club, it is necessary to have a specific rule on the subject.

C/C Sd/-
1/2

Additional Secretary to Government.

U.R. to R.D. No. 2024, dated the 2nd February 1951.

4 c.
V.R.K.
6/8/50

1414/1618.

1618

Legal Department.

According to the ruling in Shri Balsara's case, the High Court has held that to the extent to which the Prohibition Act prevents the possession, use and consumption of non-beverage and medicinal and toilet preparations containing alcohol for legitimate purposes, the provisions are void as offending against article 19(1)(f) of the Constitution even if they be within the legislative competence of the Provincial Legislature. Wincarnis would presumably be a medicated wine within the meaning of rule 3(7) of the Bombay Spirituous Medicinal Preparations Sale Rules, 1950. Under rule 10 it is necessary to produce a medical prescription for purchasing medicated wines. The rules nowhere lay down any restriction for the possession, use or consumption of spirituous medicinal preparations containing more than 10 per cent. alcohol. However as the Act has been challenged on various grounds in the Supreme Court, it is desirable not to take any action at this juncture for the amendment of the rules.

O/C. 6/2

Additional Secretary to Government

U.R. to R.D. No. 124-Confl., dated the 6th February 1951.

V.R.K.
6/2/51

Office of the R.L.A.

A revised draft of the Regulations is sent herewith.

2. Attention of Revenue Department is invited to the Legal Department Memorandum No. 5815 dated the 20th April 1950. As pointed out in R.L.A.'s opinion No. 188-Confl. dated the 20th February 1951, it would not be legally feasible to levy assessment fee as proposed by the Director of Prohibition. Draft regulations 4 to 8 of the Revenue Department draft have, therefore, been omitted from the revised draft regulations.

3. It is proposed to charge a fee of Rs. 1000/- for a Trade and Import Licence, and for Vendor's licence in Greater Bombay and Rs. 500/- for hotel licence, and for a Vendor licence in areas other than Greater Bombay. It has been held by the Advocate General, Bombay, in his opinion No. 7 dated 13th April , 1949 in connection with the charging of fees in respect of licences for the export, import and possession of mahua flowers that the fees which Government intend to charge must be one which has relation to the cost incurred by Government in issuing the licences and in regulating the sale or possession and that the licence fee must be charged bona-fide for meeting such expenses. The Revenue Department may, therefore, ascertain from the Director of Excise and Prohibition whether a licence fee of Rs. 1,000/- and Rs. 500/- as proposed for certain licences can be justified in view of the Advocate General's opinion referred to above.

O/C Sd/-
16/4

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6225, dated the 17th April 1951.

4 c.
V.R.K.
6/8/56

Prohibition Commissioner's Notification.

No. In exercise of the powers conferred by section 144 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949), the Director of Excise and Prohibition, Bombay, is pleased to make the following regulations, namely:-

1. (1) These regulations may be called the Bombay Foreign Liquor (Fees) Regulations, 1951.

(2) They shall extend to the whole of the State of Bombay.

(3) They shall come into force on the .....f..... * To be filled in by R.D.

2. The words and expressions used in these regulations shall have the meanings respectively assigned to them in the Bombay Foreign Liquor Rules, 1950.

3. The amount of fees and deposit payable by licensee and permit holder in respect of the licence and permit specified in column 1 of the Schedule hereto annexed shall, respectively, be as specified against them in columns 2 and 3 of the said Schedule.

4. The amount of fees and deposits shall be paid in Greater Bombay, at the office of the Chief Account Officer of Excise, Bombay, and elsewhere at the nearest Huzur or taluka treasury.

V.M.D./14.8
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SCHEDULE

Name of the licence or permit.	Fee	Deposit.
	2	3
1. Trade and Import licence.	Rs. 1,000/-	Rs. 10,000/-
2(a) Vendor's licence, in Greater Bombay	Rs. 1,000/-	Rs. 10,000/-
(b) Vendor's licence, elsewhere.	Rs. 500/-	Rs. 10,000/-
3. Hotel licence.	Rs. 500/-	Rs. 10,000/-
4. Club licence	Rs. 100/-	Rs. 10,000/-
5. Licence for the sale of fermented liquors (including alcoholic fruit juices and other alcoholic beverages) containing alcohol in strength not more than 3.5 per cent of proof spirit (equivalent to 2 per cent of alcohol by volume).	Rs. 10/-	...
6. Permit on grounds of health	Rs. 5/-	...
7. Temporary resident's permit	Rs. 5/-	...
8. Emergency permit.	Rs. 5/-	...

Dated.....1951.

Director of Excise and Prohibition,
Bombay.

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V.R.K.
6/8/56

Office of the R.L.A.

Three revised draft notification in place of the R.D. draft notifications Nos. 1 to 3 at pp.11 to 15 are sent herewith subject to the following observations:-

R.D. draft notification No. 3 at page 15 purports to amend R.D. notification No. 10481/46(b), dated 30th March 1950. The purpose of the proson amendment is to delegate to the Excise inspectors, Mamalatdars and Mahalkaris powers under section 52, in so far as that section relates to the power to grant permits to addicts for possession, purchase, transport, use and consumption of opium and opium drugs. Both the High Court and the Supreme Court have raised objection to the use of the word'addict'. Although the judgments of the courts objecting to the use of the word 'addict' are with reference to possession and use of foreign liquor, it is advisable not to use that word even with reference to opium and hemp drugs. The expression "addict" is nowhere used in the Act and if it is again used in the notification in question, it is likely to raise the same controversy. R.D. notification No. 3 has, therefore, been amended so as to refer to persons to whom permits may be granted on the grounds of health.

2. R.D. draft notification No. 4 at p. 17 ante is not in order for the following reasons:-

The draft notification No.4 is proposed to be issued under sections 53 and 139(g). Although the said sections are held valid by the Supreme Court, it would be advisable to use these sections in exceptional and unavoidable cases or in cases where exemption is merely consequential and does not involve the amendment of the provisions of the Act on an important matter. The matter proposed to be provided for by the proposed notification under the said sections should be embodied in the proposed amending Bill.

3. The question of carrying out the amendments proposed in R.D. draft notification No. 5 at pp. 19-21 ante does not survive as it is consequential to the draft notification No. 4

R.D. draft notifications Nos. 6 and 7 at pp.23 to 27 ante are in order.

R.K. O/C Sd/- 21/6
Remembrancer of Legal Affairs.

U.R.T.O.R.D. No. 9961 dt. 22nd June 1951.

Office of the R.L.A.

Two revised draft notifications in place of Revenue Department drafts are sent herewith.

Draft notification No. 1.(1) The word "agricultural" occurring in sub-clause (iii) of clause I of Revenue Department draft has been omitted from the revised draft as paragraph 1(b) of Revenue Department Order No. 5735/49 dated the 27th June, 1950 to which it is relatable speaks only of use for bona fide industrial, scientific, medicinal, educational or domestic purpose. It does not mention agricultural purpose.

(2) It is not quite clear form what has been stated in the entry against sub-clause (iv)(b) of clause II of Revenue Department draft, what fees are proposed to be prescribed in respect of licences for the sale of mhowra flowers granted to owners of mhowra flower trees when the quantity exceeds 500n Bengal maunds. Revenue Department is therefore requested to verify whether the fees prescribed in draft regulation 3 are in accordance with its intentions.

(3) The term "recognised bodies" used in sub-clause (v) of clause II of Revenue Department draft has been replaced by the term "a recognised body as defined in clause (c) of rule 2 of the Bombay Mhowra Flowers Rules, 1950" with a view to making it more explicit.

Draft notification No. 2.- (1) Instead of having joint columns for shewing particulars regarding the purchase and the import of mhowra flowers as in the Forms in the Revenue Department draft separate columns have been kept in the Forms in the revised draft for the purpose.

(2) It is presumed that the transport permit and the import pass referred to in column 7 of each of the Forms A, B, C and D in Revenue Department draft are the transport permit and the import pass under which the transport and the import incidental to the purchase of mhowra flowers is made. The heading in the corresponding columns of the revised Forms have accordingly been revised.

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7/8/56

(3) It is presumed that the quantity to be shown in column 13 of each of the Forms C and D of the Revenue Department draft is the quantity of Mhowra flowers sold before 6-0 A.M.(S.T.) and after 6-0 P.M.(S.T) with the permission of the Collecter as per condition 6 of the conditions of licence for the sale of Mhowra flowers (vide licence Form No. M.F.II in Bombay Mhowra Flower Rules, 1950). The heading of the corresponding columns of the revised Forms C and D has accordingly been revised.

O/C Sd/-
2/7
Remembrancer of Legal Affairs.

U.R. to R.D. No. 19866, dated the 3rd July 1951.

4 C.
V.R.K.
7/8/56

Office of the R.L.A.

In rule 13 of the draft Bombay Rectified Spirit Rules, 1950 it is necessary to retain the words "Director of Excise and Prohibition" also in the same rule there is reference to the Director of Public Instruction. For the sake of uniformity, the same words may be retained in other rules also. Necessary amendments have been accordingly carried out in the amended drafts at proper places.

In rule 21 of the draft Rules the Director of Excise and Prohibition has deleted the word "or" where it occurs ~~xxxxxxxxxx~~ for the last time, but it is necessary to retain it to make it clear that it is Part II of the requisition that is to be handed over also with Part II of the transport pass.

In sub-rule (3) of rule 23 of the draft Rules, the Director of Excise and Prohibition has deleted the word "not" where it occurs in the existing rule and inserted it after the word "is occurring in the said sub-rule. The intention of the Director of Excise and Prohibition in making the above change seems to be to make it clear that the provisions of sub-rule (1) are to apply in all cases where the transport of rectified spirit is not incidental to its purchase. But that intention is carried out by sub-rule (1) itself. What is necessary to provide is to state the case in which the provisions of sub-rule (1) shall not apply and the necessary provision is made in sub-rule (3). The sub-rule may stand as originally drafted.

C/C. Sd/- 14/7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11268, dated the 16th July 1951.

4 c.
V.R.K.
7/8/56

Office of the R.I.A.

The view taken in para 5 of the Revenue Department note at pp. 149 -152 ante is not correct, under section 39 of the Bombay Prohibition Act, as stands at present, it will not be possible to permit the Armed Forces to consume foreign liquor outside Military and Naval messes and Canteens. No recourse can also be had to clauses (b) and (c) of section 139 for permitting the Armed Forces to consume foreign liquor outside Military Naval messes and canteens.

2. As regards the point raised by Revenue Department in para 7 of the their note attention is invited to R.I.A.'s Opinion No. 8719 dated the 26th June 1950. If Revenue Department contemplates that their Orders issued under Government Notification No. 10461/46(c) dated the 30th March 1950, which were repealed after the judgment of the High Court, should be revived only in favour of Europeans, such a course would not be legally feasible. Neither can this Act be amended so as to restrict the concession to Europeans only.

3. The proposal of Revenue Department is to repeal the existing notification No. 2043/49 dated the 28th May 1951, and to have its place the notification as at pp. 117 to 131 ante. The propos notification provides for the following new matters:-

(1) Instead of Military Canteens Tenant System Licensee (which system appears to have been abolished) there is to be a new holder of licence, namely the secretary to the mess, in the case of a mess, and th canteen contractor, in the case of a canteen.

(2) It is proposed to prescribe the form of licence and the officer by whom it is to be granted.

(3) The power to fix the maximum limit to be consumed by an individual in mess or canteen is to be taken.

For this purpose it will be necessary to prescribe a new licence for the purposes of section 39. Such a licence can be authorised to be granted under section 52 of the Act and under section 53 the conditions of licence can be prescribed. The word 'prescribed' used in section 53 has the meaning given to it in section 2(24) of the Act.

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V.R.K.
7/8/51

It is, therefore, necessary to make a specific rule for prescribin a form of licence and the conditions of licence. The draft notifie tion at pp. 117-131 has, therefore, been split up into two notificati n; the first one specifies the conditions under section 59 and the second one prescribes the form of licence and the condition thereof.

O/C

Sd/-
18/8

Remembrancer of Legal Affairs.

U.O. to R.D. No. 13417, dated the 22nd August 1951.

4 c.
V.R.K.
7/9/56

Legal Department

Revised draft rules in place of the draft rules at pp. 1A to B3 ante are sent herewith.

2. Rule 4 of the Bombay Ganja Bhang and Charas Rules of the R.D. draft is unnecessary in view of the provisions of section 20 of the Bombay Prohibition Act, 1949, and has been deleted from the revised draft. Since that is the only rule relating to charas, reference to 'Charas' has been omitted from the Short Title.

3. The provisions of rule 8 of the Bombay Ganja Bhang Rules of the R.D. draft are inconsistent with the provisions of rules 3 and 4 of the revised draft which provide for the granting of licences subject to the ~~provisions~~ orders of the State Government and the Director. Rule 8 has, therefore, been deleted from the revised draft.

D/C 6d/-
23/8

Deputy Secretary to Government.

U.R. to R.D. No. 13594, dated the 23rd August 1951.

4 c,
V.R.K.
7/8/56